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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in resolution 63/185, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the United Nations High Commissioner for Human Rights, the Human Rights Council and its various special procedures mandates, the human rights treaty bodies, the Counter-Terrorism Implementation Task Force and its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate. It reports on the consideration by the United Nations human rights system of a number of current issues relating to human rights and counter-terrorism, including the absolute prohibition of torture, detention in the context of countering terrorism, access to justice and the fundamental right to a fair trial, and draws a number of conclusions in this regard.

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I. Introduction

1. The General Assembly, in resolution 63/185, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law. It reaffirmed the obligation of States to respect certain rights as non-derogable in any circumstances, and underlined the exceptional and temporary nature of derogations from the provisions of the International Covenant on Civil and Political Rights. It also reaffirmed that counter-terrorism measures should be implemented in full consideration of the human rights of all and must not be discriminatory, and called upon States not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law. It urged States to fully comply with their obligations with regard to the absolute prohibition of torture and non-refoulement, and to ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law towards persons seeking international protection.

2. Further, the General Assembly urged States to take all steps necessary to ensure that persons deprived of their liberty benefit from the guarantees to which they are entitled under international law, including the review of the detention and fundamental judicial guarantees, and opposed any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law. It called upon States to ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, and recognized the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened to make them more efficient, transparent and human rights compliant. It also urged States to include adequate human rights guarantees in their national listing procedures.

3. The General Assembly encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encouraged them to consider the recommendations of the special procedures and mechanisms of the Human Rights Council and the relevant comments and views of United Nations human rights treaty bodies. It encouraged the Security Council and the Counter-Terrorism Committee to develop cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It called upon States and other actors to continue to implement the United Nations Global Counter-Terrorism Strategy, and requested OHCHR and the Special Rapporteur to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness about the need to respect human rights while countering terrorism.

4. I was requested to submit a report on the implementation of resolution 63/185 to the General Assembly at its sixty-fourth session. The present report also responds to the request of the former Commission on Human Rights for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80.

5. In my previous report (A/63/337), I focused on a number of key thematic issues, relating to States' obligations and responsibilities under international human

rights law within the context of counter-terrorism measures, the scope and justification for derogatory measures and limitations, as well as some considerations relating to the right to a fair trial in the context of countering terrorism. The present report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the United Nations High Commissioner for Human Rights, OHCHR, the Human Rights Council and its various special procedures, the human rights treaty bodies, the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate, and the Counter-Terrorism Implementation Task Force and its Working Group on Protecting Human Rights while Countering Terrorism. This report follows the same structure as the reports submitted to the General Assembly at its sixty-first (A/61/353) and sixty-second (A/62/298) sessions. In order to continue to provide an overview of the main activities of the human rights system in the field of human rights and counter-terrorism, this report includes major developments since August 2007.[1]

II. Recent developments in the United Nations in the area of human rights and counter-terrorism

United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

6. The United Nations Global Counter-Terrorism Strategy was adopted by the General Assembly on 8 September 2006 (resolution 60/288). Through the Strategy and plan of action, which was reaffirmed by the Assembly on 5 September 2008 (resolution 62/272), all Member States agreed on a coordinated and comprehensive response to terrorism, including the promotion and protection of human rights for all and respect for the rule of law as essential to all components of the Strategy. Member States recognized that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

7. The Strategy gives support to the practical work of the Counter-Terrorism Implementation Task Force, which I established in July 2005 to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system. The Task Force currently hosts eight working groups. On 3 March 2009, the Task Force and its working groups briefed the General Assembly on its activities, as requested by the General Assembly in resolution 62/272.

8. In order to assist States in implementing the human rights aspects of the Strategy, in particular those contained in the fourth pillar of the Strategy, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", the Task Force has formed the Working Group on Protecting Human Rights while Countering Terrorism, which is led by OHCHR. Other members include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee Executive Directorate, the Office of Legal Affairs, the United Nations Interregional Crime and Justice Research Institute, the World Bank, the International

[1] The end of the reporting period of A/62/298.

Maritime Organization and the Security Council Committee established pursuant to resolution 1267 (1999). The Office for the Coordination of Humanitarian Affairs participates as an observer.

9. The Working Group supports efforts by Member States to ensure the promotion and protection of human rights in the context of counter-terrorism. It was agreed that, to this end, the Working Group would assess the support and assistance currently given to Member States to ensure the promotion and protection of human rights in the context of counter-terrorism, identify possible gaps and weaknesses, develop proposals for strengthening support to Member States, facilitate an exchange of information on critical human rights concerns, as well as "good practice" examples, drawing on experience at the national and regional levels; and provide guidance, including by developing practical tools to assist Member States in strengthening the protection of human rights in the context of counter-terrorism.

10. In November 2008, the Working Group organized an Expert Seminar which focused on the impact of terrorism and counter-terrorism measures on the enjoyment of economic, social and cultural rights. It gathered a number of experts from all regions, OHCHR representatives, and some members of the Working Group. Experts reviewed States' legal obligations in the field of economic, social and cultural rights in relation to terrorism and counter-terrorism measures before examining the impact of terrorism and counter-terrorism measures on the enjoyment of those rights, as well as the link between economic, social and cultural rights and civil and political rights as indivisible rights. Experts discussed means of monitoring the effect of counter-terrorism measures on economic, social and cultural rights and ways to prevent violations. Finally, they focused on the linkage between conditions conducive to terrorism and the inadequate fulfilment of economic, social and cultural rights. A number of concrete recommendations and suggestions were made at the Seminar, which will inform the ongoing work of the Working Group as well as provide input for the development of policy guidance and recommendations for the promotion and enhancement of the protection of economic, social and cultural rights in the context of countering terrorism when providing assistance and advice to Member States.[2]

11. The Working Group also started developing a series of basic technical reference guides to assist Member States in strengthening the protection of human rights in the context of counter-terrorism in 10 specific areas where additional human rights guidance may be useful. Following consultations with Member States, the first four basic technical reference guides being developed are on the proscription of organizations, stopping and searching of persons, designing security infrastructure, and the principle of legality in national counter-terrorism measures. Finally, on 28 May 2009, the Working Group provided a briefing on its past and planned activities to all interested Member States, which was followed by an interactive dialogue.

12. OHCHR and the Special Rapporteur are also members of other Task Force working groups, namely those on integrated assistance for countering terrorism, supporting and highlighting victims of terrorism, and countering the use of the Internet for terrorist purposes. In addition, OHCHR is a member of the Working

[2] For more details, see the summary at http://www.un.org/terrorism/pdfs/wg_protecting_human_rights.pdf.

Group on Preventing and Resolving Conflicts. In these working groups, OHCHR and the Special Rapporteur contribute to raising awareness of human rights challenges as well as mainstreaming human rights within the Task Force.

Counter-Terrorism Committee/ Counter-Terrorism Committee Executive Directorate

13. The Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate continue to take relevant human rights concerns into account in their work programmes focused on the implementation of Security Council resolutions 1373 (2001) and 1624 (2005). By its resolution 1805 (2008), the Security Council decided to conduct an interim review of the Executive Directorate by 30 June 2009. The review summarized the human rights activities of the Committee and the Executive Directorate. It noted that they have both maintained good cooperation with OHCHR, including in developing technical assistance for States in the field of human rights. The review also referred to the active dialogue that has taken place with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It welcomed the activities of the Executive Directorate in the human rights field and encouraged it to further develop them, "within the guidance of the Committee, by deepening its analytical framework, including through participation by the Executive Directorate in the Counter-Terrorism Implementation Task Force working group on protecting human rights while countering terrorism" (S/2009/289, para. 31).

Human Rights Council

14. During the period covered by the present report, the Human Rights Council adopted three key resolutions on the protection of human rights and fundamental freedoms while countering terrorism. In resolutions 7/7 and 10/15, of 27 March 2008 and 26 March 2009 respectively, the Council inter alia reaffirmed the non-derogability of certain rights in all circumstances, as well as the exceptional and temporary nature of derogations. The Council reaffirmed that counter-terrorism measures should take into consideration the human rights of minorities and must not be discriminatory. It highlighted that profiling must not be based on stereotypes founded on discriminatory grounds. It called upon States to ensure access to an effective remedy where human rights are violated as a result of counter-terrorism measures, and provide adequate, prompt and effective reparations for victims. The Council recalled the absolute prohibition of torture and urged States to respect their non-refoulement obligations. The Council also recalled the right to be equal before courts and tribunals, and urged States to guarantee due process and respect the safeguards concerning the liberty, security and dignity of the person. The Council called upon States to ensure that counter-terrorism legislation is accessible, precise, non-discriminatory, non-retroactive and in accordance with international law, and urged States to include adequate human rights guarantees in national listing and de-listing procedures. In addition, the Council urged States to protect all human rights while countering terrorism, including economic, social and cultural rights. By resolution 6/28 of 14 December 2007, the Council extended for three years the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

15. Another important development in the period covered by the present report is the new universal periodic review, which the Human Rights Council has recognized

as a tool for the promotion and protection of human rights and fundamental freedoms while countering terrorism (resolution 10/15). In 2006, the General Assembly decided in resolution 60/251 that the Human Rights Council should undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States. The universal periodic review, which covers 48 States each year and by the end of 2011 will have covered all Member States, offers another opportunity to incorporate human rights into global counter-terrorism efforts.

16. During the reviews of 80 Member States, held during the first five sessions of the Human Rights Council Working Group on the Universal Periodic Review in 2008 and 2009, a number of concerns were related to the protection of human rights and fundamental freedoms in the context of countering terrorism. States were recommended to, inter alia, review and ensure that national legislation and policies on counter-terrorism comply with international human rights law and international humanitarian law.[3] Attention was directed to the definition of terrorism and terrorist groups. Concerns were raised about the vagueness and broadness of the provisions in the different national counter-terrorism laws. Recommendations in this respect encouraged States to define acts of terrorism in a precise and narrow manner, and in compliance with international human rights law and international humanitarian law. Other recommendations concerned the rule of law and due process, including the right to a fair trial and limitations on pre-charge detention of persons suspected of terrorism, the right to freedom and security of the person, the right to legal assistance and the need to address the effects of counter-terrorism legislation on the operation of human rights defenders.[4] Recommendations were also made to States to counter terrorist-funding efforts in their territories in accordance with Security Council resolutions, and to organize human rights training for law enforcement authorities in charge of combating terrorism.[5] A number of recommendations were also made to encourage States to take action on their treaty obligations, strengthen cooperation with other human rights mechanisms, including reporting to treaty bodies and invitations to special procedures, and implement the recommendations on related themes of those mechanisms.[6] The background documentation, which provided the basis of the reviews, also included information on a number of thematic issues on human rights and counter-terrorism.[7]

Special procedures of the Human Rights Council

17. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism continued to examine a number of specific and emerging issues of importance to his mandate, through his thematic

[3] See A/HRC/10/76, para. 100.30; A/HRC/8/31, para. 78.29; A/HRC/8/42, para. 106.25; A/HRC/8/46, para. 39 (c); A/HRC/8/25, para. 56.6; and A/HRC/10/83, para. 106.23.

[4] See A/HRC/8/31, para. 78.29; A/HRC/8/25, para. 56.10; and A/HRC/8/42, para. 106.22.

[5] See A/HRC/8/48, para. 63.14; and A/HRC/10/75, para. 91.16.

[6] See A/HRC/8/29, para. 69.10; A/HRC/8/47, para. 60.22; A/HRC/10/76, para. 100.30; A/HRC/8/28, para. 58.3; and A/HRC/8/21, para. 83.12.

[7] The review is based on information prepared by the State concerned, which takes the form of a national report, as well as two reports prepared by OHCHR, i.e. a compilation of United Nations information and a summary of stakeholders' input. All documentation regarding the universal periodic review can be accessed at http://www.ohchr.org/EN/HRBodies/UPR.

reports to the General Assembly and the Human Rights Council, as well as his reports on communications with Governments and responses thereto. In addition, the Special Rapporteur reported in 2008 on his country visits to Spain and South Africa.

18. In his latest report to the Human Rights Council (A/HRC/10/3), the Special Rapporteur discussed the role of intelligence agencies in the fight against terrorism. Highlighting the fact that the collection and sharing of "signal" and "human" intelligence had led to violations of the prohibition against torture and other inhuman treatment, as well as of the right to privacy and the principle of non-discrimination, he stressed the need for a specific and comprehensive legislative framework to regulate the broader powers that have been given to intelligence agencies in the aftermath of the terrorist attacks of 11 September 2001. He also examined the more specific challenges that increased cooperation between intelligence agencies have posed and clarified the human rights obligations of States when their intelligence agencies perform joint operations, participate in interrogations and send or receive intelligence for operational use. In addition, the Special Rapporteur focused on the best practices of different oversight bodies, and emphasized that domestic State secrecy or public interest immunity clauses cannot disregard the positive obligations of States under human rights law to conduct independent investigations into severe human rights violations and provide the victims of those violations with an effective remedy.

19. In his report to the Human Rights Council at its sixth session (A/HRC/6/17 and Corr.1), the Special Rapporteur had focused on the impact of counter-terrorism measures on the enjoyment of economic, social and cultural rights, such as the impact of physical obstacles constructed for security reasons on access to health care, education and work. He highlighted the detrimental impact of measures taken in the name of countering the financing of terrorism on charitable and humanitarian organizations in their promotion of economic, social and cultural rights, as well as the impact of counter-terrorism measures on indigenous and minority communities, including the destruction of their means of livelihood, forced evictions and internal displacement. Finally, the Special Rapporteur focused on the role of the promotion of economic, social and cultural rights in addressing and countering the conditions conducive to the spread of terrorism which, he noted, needed to be included in the formulation of long-term sustainable counter-terrorism strategies.

20. In his report to the General Assembly at its sixty-third session (see A/63/223), the Special Rapporteur addressed issues linked to the fundamental right to a fair trial in the specific context of prosecuting terrorist suspects. Following an overview of the applicable legal framework — in which he stressed that fundamental principles such as the right to a fair trial may not be subject to derogation and that any derogation must not circumvent the protection of non-derogable rights — the Special Rapporteur examined the role of the judiciary in ensuring that terrorist suspects who are detained pursuant to criminal law provisions, subject to "administrative detention" or detained during the course of participating in hostilities have effective access to courts. The Special Rapporteur also emphasized that the independence and impartiality of the judiciary are key. In his report he addressed military courts or tribunals or other special courts, and pointed out that the fact that often judges are serving (military) officers appointed by the executive, and the broad discretional power of the executive to refer cases to such courts, lead to serious questions concerning the independence and impartiality of such courts,

even where instructions are given to members of a court that they are to act independently. He was concerned about cases where the executive has broad discretionary powers either to refer terrorist suspects to military or special courts, or to review or confirm the decisions of those courts, which gives the executive the ultimate control over the accused and the outcome of the trial.

21. He also discussed access to justice in the context of listing and de-listing procedures. He emphasized important elements of a fair hearing, and voiced concern about cases where a trial can lead to the imposition of the death penalty.

22. In his thematic report to the General Assembly at its sixty-second session (see A/62/263), the Special Rapporteur focused on the challenges to refugee law caused by counter-terrorism measures. In this context, his concerns were related to pre-entry interception and screening measures related to border control; detention of asylum-seekers and shortcomings in securing court review of such detention; exclusion from refugee or other protection status; the application and non-derogability of the principle of non-refoulement; the return, repatriation or resettlement of rejected asylum-seekers, including persons detained for terrorism-related reasons; the use of so-called diplomatic assurances; and strengthening global responsibility for international protection as an inherent part of a comprehensive counter-terrorism strategy.

23. The Special Rapporteur also conducted several country visits in 2008 and 2009. From 7 to 14 May 2008, the Special Rapporteur carried out an official visit to Spain, where he reported on the provisions on terrorism in Spanish law in the light of the principle of legality, aspects linked to the trial of those accused of the bombings of 11 March 2004 and the use of incommunicado detention (see A/HRC/10/3/Add.2).

24. From 17 to 21 April 2009, the Special Rapporteur carried out an official mission to Egypt. To date, he has not reported to the Human Rights Council on the outcome of his visit, but has issued a press release which highlighted his engagement with officials and experts regarding a counter-terrorism law that is intended to replace the state of emergency scheduled to end on 28 May 2010.

25. Other special procedures mandate holders have addressed a broad range of issues related to the impact of terrorism on human rights, within the context of their mandates and with due consideration for the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, by sending urgent appeal letters, issuing press releases, preparing thematic studies and conducting country visits. The following paragraphs provide examples of their recent activities.

26. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also continued to address issues related to the protection of human rights in the context of countering terrorism. In his report following his country visit to Denmark (A/HRC/10/44/Add.2), he expressed concern about cases where cooperation between various intelligence services — a necessary feature of the global fight against terrorism — involves the use of diplomatic assurances or extraordinary renditions. The Special Rapporteur recalled that, in his view, diplomatic assurances are attempts to circumvent the absolute prohibition of torture and non-refoulement, that they are unreliable and ineffective, and that they should not be resorted to where there are substantial grounds for believing that a person

would be in danger of being subjected to torture or ill-treatment upon return. He also encouraged efforts to develop a common European policy or approach aimed at improving the conditions of detention and the situation of torture and ill-treatment in potential countries of return.

27. The Special Rapporteur on the independence of judges and lawyers also highlighted a number of concerns in the context of counter-terrorism (see A/63/271). Focusing on states of emergency, he highlighted that experts at a seminar on the theme "The protection of human rights under states of emergency, particularly the right to a fair trial" had, in December 2007, noted that an increasing number of States have adopted laws to counter terrorism which allow for limitations on human rights that may be more drastic than those adopted during a state of emergency, and disregarded the conditions imposed by international law regarding derogations, sometimes even suspending non-derogable rights. The Special Rapporteur recalled that specific counter-terrorism legislation is often the basis for the setting-up of parallel systems for the administration of justice, and usually allows incommunicado detention for several days. He also noted that terrorism suspects often do not have the right to consult a lawyer of their choice, especially in police detention, and their assigned counsel do not fully perform their role of providing competent and effective legal assistance. He also added that detention and trials related to terrorism raise special concerns about judicial procedures.

28. In his report for 2008 to the Human Rights Council (A/HRC/7/14), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed counter-terrorism in the context of legal restrictions on freedom of opinion and expression. He highlighted the fact that recent counter-terrorism and national security legislation has often resulted in violations of the right to freedom of opinion and expression, which was particularly vulnerable to legislation that de facto legitimates limitations on the free circulation and expression of ideas and opinions, directly affecting the work of media professionals, human rights defenders, political groups and civil society more broadly. Journalists and media professionals have become common targets of unlawful attempts to restrict freedom of expression. Counter-terrorism legislation often restricts the right to freedom of opinion and expression by banning the publication of information that is, without justification, defined as being threatening to national security; forcing the disclosure of journalistic sources; or censoring media outlets and journalists on the basis of an alleged proximity to terrorist or rebel groups. States have also adopted measures in which national security is used as justification to allow for direct attacks against the free media, investigative journalism, political dissidence, and human rights monitoring and reporting, as well as cases where peaceful actions or demonstrations have been considered terrorist acts by certain Governments, thereby suppressing dissent.

29. The Special Rapporteur on freedom of religion or belief examined specific issues raised by counter-terrorism measures in the context of freedom of religion. Following her visit to the United Kingdom of Great Britain and Northern Ireland from 4 to 15 June 2007, she highlighted allegations of abuse of counter-terrorism laws which she reported are largely perceived by the population to target specific religious groups, including through the screening of their personal data, house searches, interrogations and arrests solely because of religious affiliation, as well profiling techniques based on physical appearance. She stated that the alienation of certain ethnic and religious groups may also have negative implications for law

enforcement efforts and for the gathering of counter-terrorism intelligence (see A/HRC/7/10/Add.3).

30. Special procedures mandate holders issued two press releases in relation to the closure of the Guantanamo Bay detention facility. On 22 December 2008, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health welcomed the statement by the President-elect of the United States of his intention to close the Guantanamo Bay detention facility and to strengthen the fight against torture. They urged the United States Government to fully respect its international human rights obligations, notably the principle of non-refoulement, and not to transfer individuals to third countries for continued detention at its behest (proxy detention). They also stressed that those detainees facing criminal charges must be provided with fair trials before courts that afford all essential judicial guarantees. They emphatically rejected any proposals that Guantanamo detainees could, through new legislation, be subjected to administrative detention, as this would only prolong their arbitrary detention. They urged that all secret places of detention be closed and that persons detained therein be given due process. Further, they called on third countries to facilitate the closure through their full cooperation in resettling those Guantanamo detainees who cannot be sent back to their countries of origin. On 23 January 2009, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture issued a press release in which they welcomed the signing by the President of the United States of executive orders, which set a timeline for the closure of the Guantanamo Bay detention centre and required the Central Intelligence Agency to shut its secret detention facilities.

31. A number of joint initiatives were undertaken by special procedures mandate holders during the period covered by this report. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances have initiated a joint study to examine the practice of secret detention from a global perspective. The joint study aims to produce new findings regarding the nature and scope of secret detention practices. It will examine the practice or permission of secret detentions which operate on the territories of States in various geographical regions, taking into account domestic, regional and global efforts to counter terrorism. In addition to thematic reporting on facts and events, the joint study will also include a legal analysis of the framework within which secret places of detention operate, and findings as to the extent to which persons have been tortured or subjected to cruel, inhuman or degrading treatment or punishment, arbitrarily detained or subjected to enforced or involuntary disappearance at such places. It is expected that the four mandate holders will produce a joint report containing recommendations regarding these practices, aimed at curbing the resort to secret detention and the unlawful treatment of detainees in the context of contemporary counter-terrorism efforts.

32. During the reporting period, the Working Group on Arbitrary Detention focused on a number of issues of concern in the context of measures taken by States

in countering terrorism, in its annual reports, its country visit reports and its opinions adopted on individual cases of alleged arbitrary detention. By way of example, the Working Group examined the issue of extended periods of preventive detention, in the absence of charges or trial, by States invoking emergency laws or in the context of countering terrorism, as well as cases of continuing detention despite court decisions ordering release, where the ruling was simply disregarded or where new warrants of administrative detention were issued and carried out or where such arrests were carried out without a warrant. The Working Group dealt with cases pursuant to special powers invoked by States and usually only attached to states of emergency, such as administrative detention orders alleged to have been carried out for security reasons, and cases of detention for security reasons where the individual did not have access to the secret evidence used against him. The Working Group also examined the situation of immigrants deemed to pose a terrorist threat, as well as detention following trials in special courts lacking fair trial guarantees (A/HRC/7/4). Following up on these concerns, the Working Group set out a list of principles which should be considered by States in relation to the deprivation of liberty of persons accused of acts of terrorism, in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (A/HRC/10/21). In addition, in the context of its visits to Italy, Mauritania and Norway, the Working Group addressed issues relating to the deportation of alleged terrorists to States where they are at substantial risk of arbitrary detention and torture in violation of the principle of non-refoulement, administrative deportation orders which lack effective remedies against a risk of torture or arbitrary detention in the country of destination (A/HRC/10/21/Add.5), access to information to challenge the legality of detention or of the rejection of applications for early release or for the termination of a preventive detention term of, inter alia, alleged terrorists (A/HRC/7/4/Add.2), and the principle of legality in the definition of terrorist acts (A/HRC/10/21/Add.2). Finally, in a key opinion relating to the detention of eight individuals in the case of the terrorist attack in which the Prime Minister of Lebanon, Rafiq Hariri, was killed, the Working Group concluded that the detention for more than two years, without charges and without tangible prospect of a trial without undue delay, was arbitrary (A/HRC/10/21/Add.1, opinion 37/2007).

Human rights treaty bodies

33. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have continued to examine the compliance of States parties to the treaties with their legal obligations to respect human rights in the context of countering terrorism. They provided, in their concluding observations, recommendations that contribute to ensuring such compliance.

34. Recurring issues of concern to the Committees include wide and ill-defined national definitions of terrorism[8] which may give rise to interpretations whereby the legitimate expression of the rights established under the International Covenant on Civil and Political Rights can be sanctioned as terrorist acts or that allow charges of terrorism to be brought against members of certain groups, minorities, indigenous

[8] See CCPR/C/ESP/CO/5 (2009), para. 10, and CAT/C/DZA/CO/3 (2008), para. 4.

groups, or for political, religious or ideological reasons.[9] Another major issue of concern is infringements on the absolute prohibition of torture.[10] This prohibition is jeopardized by the continuing use of memoranda of understanding and diplomatic assurances as well as cooperation with foreign intelligence agencies known to resort to torture, extraordinary rendition and secret places of detention and incommunicado detention.[11] The Human Rights Committee expressed the view that such practices are not necessary and may not be justified by "the interests of justice". The Committees also addressed the length of detention for terrorism-related cases, including the extension of the period of detention without charge of terrorist suspects, and extended pre-charge detention and notification requirements to children suspected or charged with terrorism offences;[12] the right to have access to a freely chosen lawyer, which constitutes a fundamental safeguard against ill-treatment; safeguards of due process and fair trial, including non-disclosure of information in the course of proceedings, based on the reasoning that it could cause injury to international relations, national defence or national security; measures taken against immigrants, refugees and asylum-seekers on grounds of national security and countering terrorism, such as their arrest, detention, including mandatory detention of foreign nationals, expulsion in disregard of human rights and refugee law; racial profiling and discrimination[13] and limitations to the right to privacy,[14] including through wiretapping for investigations.[15]

35. In a specific case, the Human Rights Committee addressed the national implementation of the sanctions regime set out by the Security Council in its resolution 1267 (1999) in the case of *Nabil Sayadi and Patricia Vinck v. Belgium*.[16] The two complainants, Belgian nationals, had been placed on the lists appended to United Nations resolution 1267 (1999) in January 2003, on the basis of information which had been provided to the Security Council by Belgium, shortly after the commencement of a domestic criminal investigation, in September 2002. They submitted several de-listing requests at the national, regional and United Nations levels, to no avail. In 2005, a Belgian court of first instance ordered the Belgian State to, inter alia, urgently initiate a de-listing procedure with the United Nations sanctions Committee, which was done by the responding State. At the time of the examination by the Human Rights Committee, the individuals had been on the sanctions list for more than five years. The individuals complained that they had not been given access to the "relevant information" justifying their listing, had not been

[9] See CCPR/C/GBR/CO/6 (2008), paras. 26 and 16.

[10] CAT/C/DZA/CO/3 (2008), paras. 4, 5, 7 and 20; CAT/C/AUS/CO/3 (2008), para. 10; CAT/C/KEN/CO/1 (2009), para. 17; CAT/C/PRT/CO/4 (2008), para. 9; CAT/C/CHN/CO/4 (2008), para. 37; CAT/C/RUS/CO/4 (2007), paras. 8 and 24; CAT/C/KAZ/CO/2 (2008), paras. 15 and 8; CAT/C/MKD/CO/2 (2008), paras. 9 and 16; CCPR/C/FRA/CO/4 (2008), para. 14; CCPR/C/GBR/CO/6 (2008), para. 12; CCPR/C/ESP/CO/5 (2009), para. 14; CCPR/C/TUN/CO/5 (2008), para. 15; CCPR/C/IRL/CO/3 (2008); para. 11; and CCPR/C/DZA/CO/3 (2007), para. 17.

[11] See CCPR/C/GBR/CO/6 (2008), paras. 15, 19 and 29; CCPR/C/FRA/CO/4 (2008); CCPR/C/LBY/CO/4 (2007), para. 12; and CCPR/C/MCO/CO/2 (2008), paras. 11 and 12.

[12] See CRC/C/GBR/CO/4 (2008), para. 77; and CRC/C/CHL/CO/3 (2007), para. 48.

[13] See CERD/C/USA/CO/6 (2008), paras. 14 and 24; CERD/C/CAN/CO/18 (2007), para. 14; CERD/C/MKD/CO/7 (2007), para. 12; CCPR/C/GBR/CO/6 (2008), para. 29; and CCPR/C/CHL/CO/5 (2007), para. 7.

[14] See CCPR/C/SMR/CO/2 (2008), para. 13.

[15] See CCPR/C/ESP/CO/5 (2009), para. 11.

[16] Communication No. 1472/2006.

prosecuted or convicted, had a clean judicial record, and had not been charged with an offence, but that the freezing of all their financial assets prevented them from working, travelling, moving funds and defraying family expenses.

36. The Human Rights Committee noted that the travel ban resulted from the transmittal by Belgium of the individuals' names to the sanctions committee, before the authors had been heard. Even though Belgium was not competent to remove the authors' names either from the United Nations or the European lists, it was responsible for the presence of the authors' names on the lists, and for the resulting travel ban. The Human Rights Committee found a violation of the authors' right to freedom of movement under article 12 of the International Covenant on Civil and Political Rights, because both the dismissal of the criminal investigation and the State party de-listing requests showed that the restrictions were not necessary to protect national security or public order. The Committee also found an unlawful attack on the authors' honour and reputation (protected by article 17 of the Covenant) based, inter alia, on the accessibility of the list on the Internet, a number of press articles, the transmittal of the information about the authors prior to the conclusion of the criminal investigation, and the fact that, despite the State party's requests for removal, the authors' names and contact data are still accessible to the public on United Nations, European and State party lists.

37. The Human Rights Committee stated that, although the State party itself was not competent to remove the authors' names from the sanctions Committee's list, it had the duty to do all it could to have their names removed as soon as possible, to provide the authors with compensation, to make public the requests for de-listing, and to ensure that similar violations do not occur in the future. This decision was followed by six individual opinions of Committee members, both on admissibility and on the merits.

38. On 20 July 2009, Nabil Abdul Salam Sayadi and his wife Patricia Vinck were removed from the Consolidated List pursuant to a decision of the Committee established pursuant to resolution 1267 (1999).

III. Activities of the United Nations High Commissioner for Human Rights and her Office

United Nations High Commissioner for Human Rights

39. In carrying out her mandate, the United Nations High Commissioner for Human Rights has continued to examine the question of the protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations about the obligations of States in this regard. Key issues of concern included the erosion of the absolute prohibition of torture in the context of countering terrorism and the attempts to circumvent safeguards included in the right to a fair trial.

40. Following the High Commissioner's welcoming of the decision to close the Guantanamo Bay detention centre,[17] she noted, in her statement to mark the International Day in Support of Victims of Torture in June 2009, the devastating impact of the terrorist attacks of 11 September 2001 on the fight to eliminate torture,

[17] Press release, 22 January 2009.

highlighting in particular the fact that States had become less scrupulous in their approach to torture, and even looked for ways to circumvent the Convention against Torture. She recalled the absolute prohibition of torture and highlighted that responsibility for the violation of this absolute prohibition could extend to the torturers themselves, the policymakers, as well as the public officials who defined the policy or gave the orders. She also recalled the absolute prohibition of refoulement, and urged States to ratify the Convention against Torture and to ensure that they abide by the very clear rules it contains. Focusing on extraordinary renditions and secret places of detention, she noted that those that are held in detention must either be tried by courts of law or released if they have not been found guilty of any crime, as continuing, indefinite or other forms of detention would be illegal under international human rights law. During the reporting period (see A/HRC/8/13), she also recalled her position that diplomatic assurances do not work as they do not provide adequate protection against torture and ill-treatment, nor do they nullify the obligation of non-refoulement which continues to apply at all times, and that efforts to eradicate torture must focus primarily on prevention, including through the establishment of systems of regular monitoring of places of detention by independent international and national bodies. She urged States to ratify the Optional Protocol to the Convention against Torture.

41. A second and related issue of concern to the High Commissioner is the continuing reluctance of some States to ensure access to courts after arrest and to abide by the right to a fair trial, a fundamental principle of human rights law, in the context of countering terrorism. In response to attempts by some States to keep terrorism suspects in prolonged, sometimes indefinite detention, or to submit them to trial by special or military courts on the basis of the argument that human rights guarantees are inappropriate to deal with the exceptional nature of terrorism, the High Commissioner recalled her view that acts of terrorism are fundamentally criminal acts in nature. As such, States should ensure that all guarantees of fair trial and due process are respected at all stages — from the arrest to the outcome of the trial — as these are procedural means to safeguard the rule of law. In the context of countering terrorism, special attention should be paid to access to courts after arrest. Moreover, detention should remain the exception, not the rule; evidence used should not have been collected through means of torture or other ill-treatment, including in the case of confessions; the accused needs to have access to the evidence that will be used as well as to witnesses, if any. Finally, a fair trial can be conducted only where the court is independent and impartial. Trials of civilians by military or special courts are not prohibited in all circumstances, but should be exceptional. The High Commissioner also recalled her position that only in rare circumstances will a military court be the appropriate venue to try a civilian terrorist suspect.

Other developments

42. OHCHR organized a number of meetings which focused on various aspects of human rights and counter-terrorism. From 27 to 29 October 2008, OHCHR organized a regional seminar for the Middle East and North Africa region on upholding human rights while countering terrorism, in Amman. The seminar gathered key partners in the region to initiate a dialogue on human rights obligations and commitments of States in matters related to counter-terrorism. On 30 April 2009, OHCHR organized a seminar on human rights and counter-terrorism in Dushanbe. Judges, lawyers and non-governmental organizations from different

regions of Tajikistan were invited to discuss key human rights obligations and the commitment of States in matters relating to counter-terrorism, as well as to identify the challenges in ensuring that measures taken to counter terrorism comply with States' obligations under human rights law.

43. During the fifth special meeting of the Counter-Terrorism Committee, on the theme "Prevention of terrorist movement and effective border security", which was held in Nairobi from 29 to 31 October 2007 and gathered a number of international, regional and subregional organizations, OHCHR delivered a presentation raising human rights concerns relating to the treatment and screening of individuals when crossing an internationally recognized State border, focusing on the use of diplomatic assurances and State responsibility for violation of the principle of non-refoulement. On 3 and 4 April 2008, OHCHR participated in the sixth Conference on Counter-Terrorism of the Asia-Europe Meeting (ASEM), on the theme "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", which was held in Spain, and was co-hosted by Spain and Indonesia. ASEM conferences aim to promote an exchange of knowledge, experiences and techniques on countering challenges from terrorism. The purpose of the meeting was to strengthen dialogue and mutual cooperation between Asia and Europe by engaging a dialogue among the relevant political authorities and experts on counter-terrorism. Finally, on 19 and 20 May 2009, OHCHR participated in the expert meeting organized by the Government of Denmark in cooperation with the United Nations Office on Drugs and Crime, in Copenhagen. The two-day meeting was to honour the sixtieth anniversary of the Universal Declaration of Human Rights. The meeting examined and discussed the various aspects of, and challenges posed by, the international obligation to bring suspected terrorists to justice with due respect for human rights and fundamental freedoms and its interplay with different areas of international law (human rights law, refugee law and the Security Council sanctions regime against Al-Qaida and the Taliban).

44. OHCHR has also contributed to the work of the United Nations Office on Drugs and Crime in the delivery of a specialized training programme for judges and prosecutors in combating terrorism. The Office also participated in a seminar organized jointly by the United Nations Office on Drugs and Crime and Spain on terrorism and human rights. It discussed national legal frameworks for countering terrorism, and provided input related to the compliance of national counter-terrorism measures with States' obligations under international human rights law, international humanitarian law and refugee law.

45. During the reporting period, OHCHR worked closely with civil society, notably through its participation in several workshops co-sponsored by Costa Rica, Japan, Slovakia, Switzerland and Turkey, with the support of the Center on Global Counterterrorism Cooperation. The workshops aimed at addressing the United Nations engagement with regional, subregional and functional bodies and civil society on implementing the United Nations Global Counter-Terrorism Strategy. The workshops discussed the international process of global counter-terrorism cooperation and the role that stakeholders can play in furthering the implementation of the United Nations Strategy and what steps the United Nations — in particular the Counter-Terrorism Implementation Task Force — might take to stimulate this engagement. OHCHR also participated in several workshops sponsored by civil society in Ethiopia and South Africa.

IV. Conclusions

46. The United Nations human rights system continues to address the question of the protection of human rights and fundamental freedoms while countering terrorism with a view to assisting Member States in abiding by their international human rights obligations while effectively combating terrorism.

47. The United Nations Global Counter-Terrorism Strategy is an important development in ensuring a coordinated and comprehensive response to terrorism at the national, regional and global levels. With the support of the members of the Counter-Terrorism Implementation Task Force, including OHCHR and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Member States should continue to implement the Strategy, which considers respect for human rights and the rule of law to be the fundamental basis of the fight against terrorism. Member States should also continue to support the work of the Task Force Working Group on Protecting Human Rights while Countering Terrorism, which is led by OHCHR.

48. States must ensure respect for all rights, in particular non-derogable rights, such as the right to life and the prohibition of torture. The United Nations High Commissioner for Human Rights, human rights treaty bodies and various special procedures mandate holders of the Human Rights Council have continued to express grave concerns regarding extrajudicial killings and summary executions, the use of torture and the alleged use of secret detention centres.

49. Member States should reaffirm their commitment in national law to the total prohibition of torture and the prosecution of those responsible for inflicting torture and ill-treatment; and prohibit the use of statements extracted under torture, whether the interrogation has taken place at home or abroad.

50. To ensure the total prohibition of torture by prohibiting torture and cruel, inhuman or degrading treatment, measures should be taken to ensure access to monitoring bodies to all prisoners in all places of detention, and to abolish places of secret detention. Further, Member States should abide by the principle of non-refoulement and refrain from returning persons to countries where they may face torture.

51. Member States are encouraged to ratify and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance as important practical measures of good faith and meaningful commitment to preventing torture, ill-treatment and enforced disappearances.

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Item 71 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, submitted in accordance with General Assembly resolution 63/182 and Human Rights Council resolution 8/3.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

The present report focuses on vigilante killings and mob justice, an issue that has received far too little attention from States, the international community and human rights advocates. A survey carried out by the Special Rapporteur shows that such killings have been reported from around the world, thus indicating that the problem is one of potential concern for all States. The report explores the phenomenon of vigilante killings and analyses the victims and perpetrators, the human rights and security implications, and the context and motives. The Special Rapporteur calls on States to take comprehensive efforts to ensure that they are not supporting or encouraging vigilante killings in any way, and to take targeted action to prevent their occurrence and punish perpetrators.

The Special Rapporteur also notes the outstanding requests made to visit States, and reports on his recent visits to Kenya and Colombia. He also outlines the thematic research that the Special Rapporteur will undertake over the next year.

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I. Introduction

1. The present report provides an update on the country missions which the Special Rapporteur has carried out since his previous report to the General Assembly: to Kenya in February 2009 and Colombia in June 2009. The report also notes his requests for country missions to many countries, including 10 current members of the Human Rights Council.

2. Section IV forms the bulk of the report, and is focused on vigilante killings and mob justice. These killings are a common occurrence around the world, but they have not received the attention they deserve. The report concludes with recommendations designed to address this problem.

3. In the preparation of the present report, the Special Rapporteur is grateful to officials of the Office of the High Commissioner for Human Rights and, in particular, to Sarah Knuckey of the Project on Extrajudicial Executions at New York University School of Law.

II. Country visits

A. Visits requested

4. Since the Special Rapporteur's previous report to the General Assembly, the Governments of Albania, Colombia and Kenya have issued invitations in response to my requests to visit their countries. As of July 2009, the Special Rapporteur has requested visits to 48 countries and to the occupied Palestinian territories. Only 15 of those (Afghanistan, Albania, Brazil, the Central African Republic, Colombia, the Democratic Republic of the Congo, Guatemala, Israel,[1] Kenya, Lebanon, Nigeria, Peru, the Philippines, Sri Lanka and the United States of America) have actually proceeded with plans for a visit. The visit to Peru was cancelled, and the Palestinian Authority issued an invitation.

5. The responses of the remaining 33 countries have ranged from complete silence, through formal acknowledgement, to acceptance in principle but without meaningful follow-up, to outright rejection. In some cases, the relevant requests were first made some nine years ago.

6. States which have so far failed to respond affirmatively to requests for a visit are Algeria, Bangladesh, Chad, China, the Dominican Republic, Egypt, El Salvador, Ethiopia, Guinea, India, Indonesia, the Islamic Republic of Iran, Israel, Kyrgyzstan, the Lao People's Democratic Republic, Mozambique, Myanmar, Nepal, Pakistan, the Russian Federation, Saudi Arabia, Singapore, South Africa, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Turkmenistan, Uganda, the United Republic of Tanzania, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

7. Ten members of the Human Rights Council have failed to issue requested invitations, some of which have been pending for many years: Bangladesh, China,

[1] The Government of Israel agreed to issue an invitation to the Special Rapporteur to visit the country in connection with his visit to Lebanon after the conflict in 2006. To date, however, it has yet to respond favourably to repeated requests to visit in relation to issues relating to the occupied Palestinian territories.

Egypt, India, Indonesia, Kyrgyzstan, Pakistan, the Russian Federation, Saudi Arabia, South Africa. This is noteworthy in view of the pledges offered in connection with elections to the Human Rights Council and of the provision of Council resolution 5/2, entitled "Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council", urging all States to cooperate with, and assist, the special procedures in the performance of their tasks.[2]

B. Updates on visits undertaken

8. Since the previous report of the Special Rapporteur to the General Assembly, visits have been undertaken to Kenya and Colombia.

Kenya

9. The report of the Special Rapporteur on his mission to Kenya was submitted to the Human Rights Council in May 2009.[3] He visited Kenya from 16 to 25 February 2009 and travelled to Nairobi and the Rift Valley, Western, Nyanza and Central Provinces. The main focus of the mission was on killings by the police, violence in Mount Elgon District and killings in the post-election period. The Special Rapporteur found that the police in Kenya frequently execute individuals and that a climate of impunity prevails, especially for police death squads operating on the orders of senior police officials and charged with eliminating suspected leaders and members of criminal organizations. He also found that in Mount Elgon both the Sabaot Land Defence Force militia and the Government's security forces engaged in widespread brutality, including torture and unlawful killings. There is widespread impunity, especially at high levels, for the abuses that occurred during the December 2007-January 2008 post-election violence. It is essential that significant steps be taken — including by setting up a national special tribunal to try the perpetrators of violence — to ensure violence does not again erupt at the next election. The alternative is a bloodbath of tragic proportions at the time of the next election.

10. It is important to bring to the Assembly's attention that before, during and after the visit of the Special Rapporteur to Kenya, human rights defenders were systematically intimidated by the police, the military and Government officials. Two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. There has been a systematic attempt to silence criticism of Kenyan security forces and the Government has done little to address the intimidation.

Colombia

11. During his mission to Colombia, from 8 to 18 June 2009, the Special Rapporteur visited Bogotá, Antioquia (Medellín), Santander (Bucaramanga) and Meta (Villavicencio). He focused on killings by the security forces, guerrillas, paramilitaries and other armed non-State actors, and examined the effectiveness of the criminal, civil and military justice systems in relation to those killings. His preliminary findings were presented at the end of his mission and his final report will be released in late 2009. The Special Rapporteur's preliminary findings were

[2] See A/HRC/5/21, chap. I.

[3] A/HRC/11/2/Add.6.

that Revolutionary Armed Forces of Columbia (FARC) and National Liberation Army (ELN) guerrillas continue to carry out significant numbers of unlawful killings. He also found that so-called "false positive" killings (unlawful killings of civilians made to look like lawful killings in combat) were carried out in a more or less systematic fashion by significant elements within the military. From 2007, the Government took a number of important steps to address the killings, but worrying gaps remain between policy and practice. With respect to paramilitaries, killings by groups that include demobilized paramilitaries continue at a disturbingly high rate across the country.

III. Research

12. Continuing the thematic research intended to contribute to a better understanding of the overall international regime for responding to extrajudicial executions, the Special Rapporteur has embarked upon two major research projects.

13. *Targeted killings*. Over the course of this next year, the Special Rapporteur will examine the legal framework applicable to the practice of "targeted killings". There has been a marked increase in such killings in recent years, particularly through the use of drone attacks or air strikes. He has previously addressed communications concerning the legal and factual basis for such killings to Israel, the United States and to States on whose territories killings have taken place.[4] For the most part, these countries have failed to cooperate with regard to the Special Rapporteur's requests. As part of his thematic research, he will examine the definition of "targeted killing" under international law, and the manner in which international human rights and humanitarian law standards apply to targeted strikes and attacks, both in and outside the context of active hostilities. He plans to focus in particular on the norms and procedural safeguards that are required in order for States to fulfil their obligation under international law to protect civilians from targeting attacks.

14. *Fact-finding*. Drawing upon the past five years of his experience as Special Rapporteur and upon missions to over 10 countries around the world, the Special Rapporteur will examine the nature, purpose and objectives of human rights fact-finding. He will analyse the various forms and methodologies of fact-finding, standards of proof, obstacles to effectiveness, the relationships between human rights fact-finding and other similar work in other disciplines (forensic science, anthropology, criminal justice), and best practice in the field.

IV. Vigilante killings and mob justice

A. Introduction

15. On 2 June 2009, a Guinean Government official urged citizens to "burn alive armed bandits who are caught red-handed".[5] In India on 22 July 2009, a mob beat to death three suspected thieves and threw stones at the police who attempted to

[4] A/HRC/4/20/Add.1, pp. 244-246 and 342-361; E/CN.4/2006/53/Add.1, annex, pp. 129-136, 183-184 and 264-265; E/CN.4/2005/7/Add.1, paras. 357-361.

[5] BBC News, "Fury at Guinea 'burn thief' idea", 4 June 2009.

prevent the murders. On 12 July 2009, residents of a district in Uganda beat and burnt to death a suspected burglar. On 8 January 2009, a man in Australia charged with sexual offences against children was murdered while asleep in his home, the day before his trial was to begin.[6] Such "vigilante killings" (unlawful killings by private citizens of suspected criminals and others) are referred to by a range of euphemisms, including jungle justice, lynch law, mob justice, instant justice, lynching, *linchamientos*, violent self-help, street justice, people's justice, *justice sommaire* and private justice. It must be emphasized that problems with vigilante killings are by no means the preserve of any one geographical region, or of developing countries. They have been reported from around the world and the problem is thus one of potential concern to all States.

16. Governments tend to wash their hands of responsibility for such killings on the grounds that private actors were responsible and there was nothing the Government could have done to prevent them. Indeed, there are clearly many instances in which individuals or mobs act entirely of their own accord and in circumstances in which Government officials are either absent or helpless. But it often also transpires that those killed were on a Government list of undesirables and that the killings are not exactly lamented by the authorities. Sometimes, Government connivance or at least passive acquiescence becomes apparent. And in the worst-case situations, Governments have in fact opted to act through the intermediary of alleged vigilantes.

17. In many, if not most, cases, such killings constitute human rights violations and engage the international legal responsibility of States. Yet they have received all too little sustained or systematic attention from the human rights community.

18. Whose rights and which rights are violated by these killings? How many such killings occur around the world? What motivates them? When and why are they supported by the public? Who are the victims and the perpetrators? What role have States played in encouraging or supporting vigilante murders? What legal obligations, if any, do States have with respect to them? And what can and should States and the international community do to reduce the killings?

19. There follows, the Special Rapporteur's preliminary analysis of these issues.

B. What are vigilante killings?

20. There has been much debate over the precise meaning and legitimacy of the term "vigilantism" in the historical, anthropological and political science literature.[7] Attempts have been made, especially in early United States literature on the subject, to justify vigilante killings as an expression of popular sovereignty: "one of the key reasons for vigilantism's taking hold in America was the belief that the rule of the people superseded all other rule. And from that followed the premise that they had

[6] Ronan O'Connell, "Murdered man 'vigilante victim'", 18 July 2009, *The West Australian*.

[7] See, for example: John Caughey, *Their Majesties the Mob*, 1960; William E Burrows, *Vigilante!* (1976); H. Jon Rosenbaum and Peter C. Sederberg (eds.), *Vigilante Politics*, 1976; Les Johnston, "What is vigilantism?" *British Journal of Criminology*, vol. 36, No. 2, 1996; Ray Abrahams, *Vigilant Citizens: Vigilantism and the State*, 1998; the various essays contained in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003; Joshua Barker, "Vigilantes and the State", *Social Analysis*, vol. 50, issue 1, 2006.

the power to act in their own best interest in the absence of effective constituted authority".[8] Later writings, however, stressed the negative consequences that such killings have for the rule of law.[9]

21. Until the late 1980s the phenomenon appears to have received little scholarly attention outside of the United States. Since then, edited volumes and articles have discussed vigilantism in the context of Latin America (especially Brazil), Africa (especially South Africa, Nigeria, Tanzania, Ghana) and Asia (especially the Philippines).[10]

22. Various definitional attempts have been made. Johnston, for example, argues that vigilantism has six key elements involving: (a) planning and organization by (b) private agents (c) acting autonomously (d) using or threatening the use of force (e) in reaction to real or perceived criminal activity or deviance and (f) aiming to control crime or deviance by offering security.[11] Burrows earlier set out a similar list of elements for defining a vigilante group: (a) a formal organization, (b) existing for varying periods of time, which (c) justifies its existence as due to the failures of the State to provide security, (d) professes to act only as a "last-resort", (e) works to strengthen "the legal system, never for its destruction", and (f) "represents the establishment".[12]

23. Subsequent writing has, however, challenged these definitions, noting their general accuracy in the United States context, but arguing that they are not fully appropriate for other contexts, especially where the killings are undertaken in a more spontaneous or disorganized fashion.[13]

C. Survey: vigilante killings around the world

24. Vigilante killings have been an issue in many of the countries visited by the Special Rapporteur, including Brazil, Nigeria, Kenya, the Philippines, the Central African Republic and Guatemala. Further research indicates their widespread occurrence across the globe, and that they are confined neither to specific regions nor to particular phases of national socio-economic development. The examples that follow are designed to illustrate the nature and scale of the problem, but are by no means an authoritative or comprehensive list.

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[8] Burrows, note 7 above, p. 17. See pp. 8-23 for discussion of arguments for vigilantism in the nineteenth century United States context. Also see Abrahams, note 7 above, pp. 12-13.

[9] Burrows, note 7 above, p. 11.

[10] See, for example, Abrahams, note 7 above (arguing that vigilantism has received insufficient attention outside the United States and seeking to address this by analysing vigilantism in, for example, Tanzania, Uganda and the Philippines); Martha K. Huggins, "Introduction: vigilantism and the State — a look south and north", in Martha K. Huggins (ed.), *Vigilantism and the State in Modern Latin America: Essays on Extralegal Violence* (1991) (applying United States literature on vigilantism to the Latin American context).

[11] Les Johnston, "What is Vigilantism?", *British Journal of Criminology*, vol. 36, No. 2, 1996.

[12] Burrows, note 7 above, pp. 13-14.

[13] Huggins, note 10 above, pp. 3-4 (questioning the requirement of "organization").

25. *Nigeria*. Vigilante groups grew in Nigeria during the 1990s.[14] During the Special Rapporteur's mission to Nigeria in 2005,[15] he heard persistent reports of vigilante killings by organized groups and noted that the groups were "largely formed to fill the security vacuum caused by ineffectual policing, and in some instances are actually supported by members of the Government".[16] Executions were often carried out publicly. In some cases, Government officials were reportedly responsible for recruiting vigilantes and paying them salaries in excess of those earned by junior police officers. The Special Rapporteur also heard reports of religious-based vigilante groups operating as an integral part of overall State policing, responsible for attacks on allegedly inappropriately dressed women, businesses selling alcohol, and sex workers. In his follow-up report in 2008, the Special Rapporteur reported that the problem of violence by vigilantes and criminal organizations had significantly worsened in the wake of political support for such groups during the April 2007 election.[17]

26. *Guatemala*. During his mission to Guatemala, the Special Rapporteur found that lynchings were a "persistent problem" and reliable estimates of such killings were 23 to 54 per year from 1996 to 2001.[18] In his June 2009 follow-up report on Guatemala, he noted there were reports of 18 lynchings in 2008, that most lynchings continued to be carried out against suspected robbers and that measures were being taken to address the killings.[19] In addition, organized criminal groups continued to target and kill suspected criminals and gang members in an effort to "cleanse" society of undesirables, often with the support of local officials.[20] One notable factor in Guatemala is that the United Nations Verification Mission in Guatemala (MINUGA) had carried out a detailed study into lynchings in the country. The study tracked lynchings over time, analysed where they occurred, against whom they were committed and their motivations. It found, for example, that 55 per cent of lynchings were committed in response to the theft of personal property, that they were generally committed in poor areas with inadequate State presence, and that most victims were men aged between 18 and 40.

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[14] Daniel Jordan Smith, "The Bakassi Boys: vigilantism, violence, and political imagination in Nigeria", *Cultural Anthropology*, August 2004, 19:3.

[15] See E/CN.4/2006/53/Add.4 and A/HRC/8/3/Add.3; see also, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Nigeria (A/HRC/7/3/Add.4, para. 9); see also, the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95/Add.2, para. 84); see also, Human Rights Watch, "Rest in pieces: police torture and deaths in custody in Nigeria", 26 July 2005, available at www.hrw.org/en/reports/2005/07/26/rest-pieces?print; Amnesty International, "Nigeria: are human rights on the political agenda?", 29 May 2007, available at www.amnesty.org/en/library/asset/ AFR44/013/2007/en/753d64ef-d38d-11dd-a329-2f46302a8cc6/afr440132007en.html; Innocent Chukwuma, "Responding to Vigilantism", in *Human Rights Dialogue* 2.8 (Fall 2002): "Public security and human rights".

[16] A/HRC/8/3/Add.3, para. 92. On the role of politicians in the financing of vigilante groups, also see Johannes Harnischfeger, "The Bakassi Boys: fighting crime in Nigeria", *Journal of Modern African Studies*, 2003, 41:1.

[17] A/HRC/8/3/Add.3, paras. 68-69.

[18] A/HRC/4/20/Add.2, para. 27. On lynchings in Guatemala, also see Jim Handy, "Chicken thieves, witches, and judges: vigilante justice and customary law in Guatemala" (2004) 36 *Journal of Latin American Studies* 533.

[19] A/HRC/11/2/Add.7, para. 17.

[20] Ibid., para. 14.

27. *Kenya*. The lack of faith in the police to act in a professional manner and to respond appropriately to threats to security posed by criminals has encouraged vigilantes to take the law into their own hands. For example, vigilante groups have emerged to counter the Mungiki organized criminal group. The vigilante groups reportedly operate with the tacit support of the police in some areas. In April-May 2009, the killings of suspected Mungiki members by a vigilante group known as "The Hague" resulted in retaliation killings by the Mungiki of "Hague" members and their sympathizers.[21] Further Mungiki-Hague killings erupted in June 2009.[22] Mob killings of suspected witches, thieves and others are also often reported.[23]

28. *Brazil*. Spontaneous mob-style killings of suspected criminals appear to be infrequently reported now in Brazil, but planned and organized vigilante killings have often been documented in recent years.[24] This has included the killing of so-called street children by armed groups, and the hiring of killers by the victims of crime.[25]

29. *Philippines*. The Special Rapporteur reported in 2007 on the situation of vigilante killings by death squads in Davao City and on the officially sanctioned character of the killings.[26] Since 1998, the Davao Death Squad has killed over 500 people, generally executing people publicly. These death squads target suspected petty criminals, drug dealers, gang members and street children. In Davao City, officials submit names of suspected criminals for inclusion on law enforcement watch lists.[27] There appear to have been no convictions in any of these killings and the Mayor of Davao City has made public statements which appear to support such killings.[28] The vigilante killings by the Davao Death Squad have worsened since 2007, with some 28 killings reported in the first month of 2009.[29] They also appear

[21] See A/HRC/11/NI/5; see also Amnesty International, "Kenya: Government must respect and protect the rights of all", 27 April 2009, available at www.amnesty.org/en/library/asset/AFR32/004/2009/en/02cfa669-9e7f-4098-8e40-2b6cdf7626a3/afr320042009en.html.

[22] "Kenya: fresh strikes by Mungiki spread fear in Kirinyaga", 24 June 2009, *All Africa* at http://allafrica.com/stories/200906240995.html.

[23] Odhiambo Joseph, "Horror of Kenya's 'witch' lynchings", BBC News, 26 June 2009, at http://news.bbc.co.uk/2/hi/africa/8119201.stm; "Lynching in Kenya: A routine crime", *The Economist*, 18 June 2009 (describing the mob killing of three men, accused of stealing a mobile phone) at http://www.economist.com/world/mideast-africa/displaystory.cfm?story_id=13876716.

[24] For a study of lynchings between 1979 and 1988, see José de Souza Martins, "Lynchings — life by a threat: street justice in Brazil, 1979-1988", in Huggins (ed.), note 10 above (noting that 43.1 per cent of lynchings studied were motivated by crimes against the person (rape, assault, murder), and 32.4 per cent by crimes against property (robbery, theft); that the victims were generally male, young and poor; and that lynchings generally were committed outdoors and in public).

[25] A/HRC/11/2/Add.2, para. 38.

[26] A/HRC/8/3/Add.2, paras 39-44; see also A/HRC/8/NGO/27, a written statement submitted by the Asian Legal Resource Centre; see also Human Rights Watch, "Philippine death squads: a murderous plague", 19 May 2009, available at www.hrw.org/en/news/2009/05/19/philippine-death-squads-murderous-plague; Human Rights Watch, "You can die any time: death squad killings in Mindanao", 6 April 2009, available at www.hrw.org/en/reports/2009/04/06/you-can-die-any-time-0?print; Human Rights Watch, "Philippines President pledges to investigate extrajudicial killings", 7 July 2009, available at www.hrw.org/en/news/2009/07/06/philippines-president-pledges-investigate-extrajudicial-killings; Human Rights Watch, *World Report 2009*, chapter on the Philippines, available at www.hrw.org/en/world-report/2009/philippines.

[27] A/HRC/11/2/Add.8, para. 19.

[28] Ibid., para. 21.

[29] Ibid., para. 8.

to be spreading to other cities in the Philippines. President Arroyo was recently quoted as ordering the police to "get to the bottom" of vigilante killings,[30] and the Commission on Human Rights of the Philippines launched an important investigation into the killings in May 2009.

30. *Central African Republic.* Reports of mob justice in the Central African Republic in 2008 and 2009 were widespread and are generally attributed to the very poor functioning of the police and of the criminal justice system. These incidents included the execution of people accused of witchcraft.[31]

31. *United States.* Vigilantism has a long history in the United States and the values and specific context that gave rise to it there have been extensively studied.[32] Recently, former offenders included on online sex offender registries have reportedly been the targets of vigilante violence. Registrants and their families have been chased from their homes, had their homes vandalized and burned, and been assaulted by neighbours or strangers who discovered that the registrant was a convicted sex offender. At least four registrants were killed in 2005-2006.[33] Vigilante killings of doctors who perform abortions have also taken place, most recently that of Dr. George Tiller on 31 May 2009.[34]

32. *Guinea.* On 2 June 2009, a senior official of the National Council for Democracy and Development Government of Guinea, Captain Moussa Tiegboro Camara, publicly stated: "I am asking you to burn alive armed bandits who are caught red-handed ... Our jails and our correctional centres can no longer take in people and the situation cannot carry on like this ... It's better to kill all those who kill".[35] Three days later, human rights groups reported the murder of a man by a group of residents who accused him of theft, and beat and burnt him to death.[36] Captain Tiegboro reportedly praised the population for the murder, and told them that if they did not have petrol to burn criminals with, he would provide them funds with which to purchase it.[37]

33. *Indonesia.* After the end of President Suharto's rule in 1998, reports of vigilantism grew and it became "common for citizens themselves to mete out punishments" to suspected criminals.[38] Thieves are "often beaten or even burned alive" and suspected witches are "publicly lynched by their neighbors".[39]

34. *Mexico.* On 15 January 2009, a group of residents called "Juárez Citizens Command" released a public statement promising to kill one criminal each day until gang and cartel violence decreased in the town of Juárez, Mexico: "Our mission is

[30] Human Rights Watch, "Philippine death squads: a murderous plague", 19 May 2009, available at www.hrw.org/en/news/2009/05/19/philippine-death-squads-murderous-plague.

[31] S/2008/733, para. 42; S/2009/309, para. 34; A/HRC/11/2/Add.3, paras. 49-51.

[32] See, for example, Richard Maxwell Brown, *The Strain of Violence: Historical Studies of American Violence and Vigilantism*, 1975; Burrows, note 7 above.

[33] Human Rights Watch, "No easy answers: sex offender laws in the US", 11 September 2007, available at www.hrw.org/en/reports/2007/09/11/no-easy-answers-0?print.

[34] Joe Stumpe and Monica Davey, "Abortion Doctor Shot to Death in Kansas Church", *The New York Times*, 1 June 2009.

[35] BBC News, "Fury at Guinea 'burn thief' idea", 4 June 2009.

[36] Human Rights Watch, "Guinea: coup leaders undermining rights", 8 July 2009, available at www.hrw.org/en/news/2009/07/08/guinea-coup-leaders-undermining-rights.

[37] Ibid.

[38] Joshua Barker, "Vigilantes and the State", *Social Analysis*, vol. 50, issue 1, Spring 2006.

[39] Ibid.

to finish each 24 hours with the life of a criminal. The hour has come to stop this disorder in Juárez."[40] The group was formed in response to the thousands of murders, kidnappings, robberies and carjackings that had occurred in previous years.

35. *South Africa*. There has been much reporting and analysis of the widespread vigilante murders in post-Apartheid South Africa. Reports "show a gruesomely mounting tally of death and injury to apparent wrongdoers by members of the public. Vigilantism and kangaroo courts are becoming a South African way of life as a hapless, outnumbered and outgunned, and reportedly demoralized, police force finds itself unable to cope with the country's spiralling crimewave."[41] Reports record, for example, the beating to death of robbers by villagers; the shooting to death of a man accused of stealing a mobile phone; the beating and setting on fire of a "troublemaker"; and the formation of formalized vigilante groups, with paid membership and defined services.[42] Vigilante killings of immigrants also occurred in xenophobic attacks in 2008, in which immigrants were blamed for job and housing losses and increasing levels of crime.[43]

36. *Nepal*. During the internal armed conflict in Nepal, vigilante killings were often reported. In many rural areas, the Government created and armed vigilante groups. The Home Minister was quoted as applauding allegations of executions by vigilantes, saying that recourse to courts was irrelevant during a war.[44] These groups were reportedly poorly trained and ill-disciplined and frequently abused the populations they were allegedly protecting, beating and killing those suspected of Maoist sympathies, extorting money and violently intimidating villagers. In return, Maoists punished members of vigilante groups, abducting and killing them and their supporters.[45] In 2009, populations in some areas continued to be subjected to

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[40] Dave Gibson, "Have the citizens of Juárez and El Paso finally had enough?", *American Chronicle*, 17 January 2009.

[41] Tom Nevin, "South Africa: vigilante groups out of control", *African Business*, Feb. 2007, 328, p. 46.

[42] Ibid., pp. 46-47. Also see Rebekah Lee and Jeremy Seekings, "Vigilantism and popular justice after Apartheid", in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003; Anthony Minnaar, "The 'new' vigilantism in post-April 1994 South Africa: searching for explanations", in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003.

[43] *The New York Times*, "Constant fear and mob rule in South Africa slum", 29 June 2009, available at www.nytimes.com/2009/06/30/world/africa/30safrica.html?scp=3&sq=vigilante&st=cse; United States Department of State, "South Africa", in 2008 Country Reports on Human Rights Practices, 25 February 2009, available at www.state.gov/g/drl/rls/hrrpt/2008/af/119025.htm.

[44] Human Rights Watch, "Nepal human rights crisis continues", 5 April 2005, available at www.hrw.org/en/news/2005/04/05/nepal-human-rights-crisis-continues; see also Human Rights Watch, "Nepal: civilians at risk as conflict resumes", 27 March 2006, available at www.hrw.org/en/news/2006/03/27/nepal-civilians-risk-conflict-resumes.

[45] Human Rights Watch, "Nepal: but it's not too late to prevent new bloodshed", 23 March 2006, available at www.hrw.org/en/news/2006/03/23/nepal-its-not-too-late-prevent-new-bloodshed. Amnesty International also documented State support and training of vigilantes: "Nepal: military assistance contributing to grave human rights violations", 14 June 2005, available at www.amnesty.org/en/library/asset/ASA31/047/2005/en/a866bcb9-d4e4-11dd-8a23-d58a49c0d652/asa310472005en.html. See also: Amnesty International, "Nepal: vigilante groups worsen human rights situation", 2 August 2005, available at www.amnesty.org/en/library/asset/ASA31/066/2005/en/0186ac77-d4c2-11dd-8a23-d58a49c0d652/asa310662005en.html; E/CN.4/2006/71/Add.2, paras. 17-18; E/CN.4/2006/107, paras 59-60; Amnesty International, "Nepal: human rights abuses escalate under the state of emergency", 19 April 2005, available at www.amnesty.org/en/library/asset/ASA31/036/2005/en/d4c20dc3-d4fb-11dd-8a23-d58a49c0d652/asa310362005en.html.

criminal activities by armed groups, believed to include members of former vigilante groups.[46]

37. *Ghana*. Mob killings have frequently been reported in Ghana.[47] News reports from July 2009 highlight apparently rising rates of mob justice, especially in response to suspected thefts.[48] A sociological analysis of vigilante killings there found that victims were generally young, urban males accused of theft. They were generally attacked by spontaneous mobs, who used whatever weapons were available.[49] Another academic analysis of the reasons for public support for vigilantism found that "public support for vigilante self-help was fundamentally linked to people's judgments about the trustworthiness of the police".[50]

38. *Haiti*. In February 2006, the United Nations noted that "mob violence, including lynchings and the destruction of property, remained a widespread problem and was frequently not curbed effectively by law enforcement and judicial authorities".[51] The United Nations Stabilization Mission in Haiti also documented cases of killings by vigilante groups with connection to police elements, and killings by mobs, with police involvement, in Port-au-Prince. The report noted that "no action was taken" by the Government in response to the allegations.[52]

39. *Albania*. Vigilante killings, in the form of *gjakmarra* or "blood feuds" (killings of alleged killers), have been reported in Albania.[53] Blood feuds have existed for centuries in Albania, but resurged after the collapse of communism. To address the issue, Parliament specifically criminalized blood feuds in 2007 (in addition to the already existing criminalization of premeditated murder). The Government has also sponsored civil society organizations devoted to promoting reconciliation between families.

40. *Burundi*. The independent expert on the situation of human rights in Burundi reported in 2008 that mob justice was "prevalent" and primarily caused by the weak justice system. The expert found that 23 cases of mob justice had been reported between January and June 2008. Victims reportedly included people suspected of a range of offences, and also included those accused of witchcraft.[54] The expert stated: "lack of confidence in the police and the judiciary are a major explanation for this trend".[55]

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[46] S/2009/1, para. 42.

[47] See, for example, The Commission on Human Rights and Administrative Justice (Ghana), "Mob Justice", 17 May 2008, at www.chrajghana.org/section-details.asp?ARTID=81.

[48] Kwaku Baah-Acheamfour, "Ghana: mob justice hits cape coast", 20 July 2009, at http://allafrica.com/stories/200907201455.html.

[49] Mensah Adinkrah, "Vigilante homicides in contemporary Ghana", *Journal of Criminal Justice*, vol. 33, issue 5, September-October 2005, pp. 413-427.

[50] Justice Tankebe, "Self-help, policing, and procedural justice: Ghanaian vigilantism and the rule of law", (2009) 43 *Law and Society Review* 245, pp. 259-260.

[51] Report of the Secretary-General on the United Nations Stabilization Mission in Haiti (S/2006/60), para. 43.

[52] Ibid., para. 44.

[53] See US Department of State, *2008 Country Reports on Human Rights Practices*, Albania; US Department of State, *2007 Country Reports on Human Rights Practices*, Albania.

[54] A/HRC/9/14, para. 68. See also earlier reports: A/62/213, para. 41; A/HRC/4/SR.20, para. 51; A/HRC/4/5, para. 39; A/61/360, para. 93.

[55] A/HRC/9/14, para. 68.

41. *Benin*. The issue of mob justice was raised during the second periodic review of Benin before the Committee against Torture. The Government noted that the problem had first emerged in the 1990s and had recently worsened for several reasons: "The time taken to come to trial and the decisions handed down following trial, in accordance with the law, do not always please people. Some see justice as too slow, others as too lenient, and it is then that they may decide to take the law into their own hands … Mob justice thus becomes a form of summary justice. Those suspected of wrongdoing are seized at the scene of the crime by individuals who see themselves as upholders of the law though they have no mandate or power."[56] The Government stated that it was doing what it could to stop the killings and that where perpetrators were found, they were prosecuted. Further, education measures were taken with respect to the general population.[57]

42. *Uganda*. In 2007 the United Nations reported various instances of mob justice, including lynchings of suspected witches, a mob breaking into a police station to kill suspects and the killing of juvenile suspects being escorted to a police station.[58] It was also observed that the virtual absence of the justice system in northern Uganda had resulted in the proliferation of "mob justice".[59] The following year the United Nations noted that mob justice was "compounded by the lack of access to formal justice where populations take the law in their own hands", especially in response to theft, killings, sexual offences and witchcraft. There were also allegations that police and judicial officials colluded with criminals.[60] The report concluded that mob justice "remains an issue to be further studied".[61]

43. *Hungary*. In October 2006, a mob reportedly beat to death a man who two days earlier had been responsible for a hit and run motor vehicle accident involving an 11-year-old Romani girl.[62]

44. *Cambodia*. Vigilante killings in Cambodia are often attributed to high levels of corruption and low levels of confidence in the police and judiciary.[63] In 2005, vigilantes, sometimes acting in large groups of up to 100 persons, were responsible for an estimated 22 deaths of suspected thieves or alleged witches.[64] In one case, a teenage boy was beaten to death by a mob on suspicion that he had attempted to steal a ladder.[65] Prosecutions of the killers were reportedly rare.

45. *Tanzania*. A medical study of autopsy reports found that 1,249 people were killed by "mob justice" in Dar es Salaam between 2000 and 2004.[66] Most of those

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[56] CAT/C/BEN/Q/2/Add.1, paras. 114-115. For examples of mob justice in Benin, see Annie Barbara Chikwanha, "Benin crime and criminal justice issue paper 2007", Africa Human Security Initiative, p. 5.

[57] CAT/C/BEN/Q/2/Add.1, paras. 117-118.

[58] A/HRC/4/49/Add.2, paras. 38-40.

[59] Ibid., para. 38.

[60] A/HRC/7/38/Add.2, para. 6.

[61] Ibid.

[62] US Department of State, *2006 Country Reports on Human Rights Practices*, Hungary; European Roma Rights Centre, "Anti-Romani hatred promoted by Hungarian media: ERRC concerned at inflammatory responses to mob crime", 17 October 2006.

[63] US State Department, *2005 Country Reports on Human Rights Practices*, Cambodia.

[64] Ibid.

[65] Ibid.

[66] Paul M Ng'walali and James N Kitinya, "Mob justice in Tanzania: a medico-social problem", 2006, *African Health Science*, vol. 6 (1).

killed were stoned or burnt to death, and over 95 per cent of the killings were committed in response to suspected robbery.

46. *Liberia*. Incidents of vigilante justice resulted in at least 10 deaths in 2008, and mob attacks have reportedly taken place at police stations and courthouses to attack suspects.[67] The 2007 report of the United Nations Mission in Liberia documented various cases of mob justice, including against a suspected juvenile thief and "witches", and also documented the failures of the State to act to protect victims and prosecute the perpetrators.[68] A report of the Panel of Experts on Liberia submitted to the Security Council quoted the Minister of Justice as calling upon "community dwellers, in the face of the police inability to decisively deal with the upsurge in criminal activities in the city, to organize themselves into community watch teams or vigilante groups in helping to protect themselves against these murders that are bent on disrupting our hard earned peace". The Panel noted that the President had subsequently stated that the Government was advocating community watch teams and not mob justice. The Panel commented that the dramatic increase in vigilante violence likely reflects "people's desperation with the impunity resulting from a dysfunctional justice system" and "an intolerable increase in serious crime".[69]

47. *Papua New Guinea*. In February 2009, in Ban village, local men shot and burned a man and burned his son alive on the basis that they had caused the death of a prominent member of the community by sorcery. A woman was stripped naked, gagged and burned alive at Mount Hagen after being suspected of practising witchcraft.[70]

48. *Democratic Republic of the Congo*. In a 2009 combined report of seven thematic special procedures, note was taken of a reported growth in lynching and other illegal acts of vigilante justice, which "further undermines the rule of law".[71]

D. Preliminary analysis and issues of concern

49. This indicative survey of recent vigilante killings provides a basis upon which to analyse the human rights and international legal implications of such killings, to highlight specific issues of concern and to generate some preliminary conclusions to guide further work in this complex area.

1. Definitions of vigilantism

50. The survey indicates that the nature of acts treated as "vigilante killings" can vary widely. This underscores the fact that strict definitions based on the

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[67] Human Rights Watch, p. 36, *World Report 2009*, chapter on Liberia", available at www.hrw.org/en/world-report/2009/liberia; see also Human Rights Watch, "Letter to the UN Security Council in advance of Africa trip", 11 May 2009 available at www.hrw.org/en/news/2009/05/11/letter-un-security-council-advance-africa-trip.

[68] United Nations Mission in Liberia, *Report on the Human Rights Situation in Liberia: May-October 2007*, Human Rights and Protection Section, paras. 17-18.

[69] S/2006/976, paras. 9-10; see also S/2005/560, para. 21.

[70] A/HRC/11/2/Add.1, pp. 312-313; Amnesty International, "Increasing sorcery-related killings in Papua New Guinea", 11 February 2009, available at www.amnesty.org/en/news-and-updates/news/increasing-sorcery-related-killings-papua-new-guinea-20090211.

[71] A/HRC/10/59, para. 59.

experiences of a limited number of countries should be avoided as they fail to grasp the scope and variety of such killings across the world.

51. At their core, vigilante killings are those undertaken by individuals or groups who "take the law into their own hands".[72] They are killings carried out in violation of the law by private individuals with the purported aim of crime control, or the control of perceived deviant or immoral behaviour. Specific incidents of vigilante killings can most usefully be categorized along various axes — such as spontaneity, organization and level of State involvement — and can be considered in relation to various characteristics — including the precise motivation for the killing, the identity of the victim and the identity of perpetrators.[73] At one end of a spontaneity-planning continuum, for example, would be a set of killings carefully planned and orchestrated by a group which formed itself for the purpose of killing, for example, the listed leaders of a known criminal gang in a particular town. At the other end would be a group of people unknown to each other who responded to a person's cry to catch a thief in the street and who came together at that point to murder the suspect in an instant of "mob justice". It is the illegality and motive which brings these killings together as instances of vigilantism.

52. Although the lines can sometimes become blurred, vigilante killings should be conceptually separated from a range of other types or forms of killings which may definitionally overlap in certain respects, but which are in fact distinct. For example, although vigilante killings are sometimes justified by individual perpetrators as "necessary" or as "self-defence", they are distinct from killings lawfully committed in self-defence, because they are not actually carried out in response to an immediate threat or use of lethal force. Killings by vigilantes are also distinct from those that may be committed by mercenaries, in that the actions of the latter are carried out by persons motivated primarily by personal gain.[74] Vigilantes are also distinct from insurgents, guerrillas and rebel groups because vigilantes are not against the State as such; nor do they seek fundamental changes in the structure of the State, or separatism. Vigilantism is "conservative violence ... designed to create, maintain, or recreate an established socio-political order".[75] In addition, vigilante killings should be analytically separated from the broad category of killings carried out by armed groups or forces during international or non-international armed conflict, although vigilante killings can of course be committed within the general context of an armed conflict.

2. The role of the State and the State's obligations to respect and ensure the right to life

53. Very often, conceptions of vigilantes paint them as individuals or groups acting privately to provide justice where the State fails to do so. States also commonly deny any official involvement in vigilante killings. However, the survey indicates that a more accurate accounting of vigilante killings must take cognizance of not only fully private vigilante acts, but also a spectrum of State involvement. An

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[72] Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism*, 1975, p. 96.

[73] For discussion of some of these variables, see Huggins, note 10 above, pp. 8-10.

[74] Article 47 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).

[75] Rosenbaum and Sederberg, note 7 above, p. 4.

important conclusion to be drawn from the examples above is that covert or overt official involvement in or encouragement of vigilante killings is actually quite common, and perhaps more common than might otherwise be assumed given that the justification generally given for vigilantism is that it is necessary in lieu of effective State power.[76]

54. The State's role can exist on a continuum from being non-existent; to failing effectively to prevent the killings and prosecute perpetrators; to implied approval or tacit support for killings; to active encouragement, including official verbal support for killings; and overt direct State involvement, including official assistance in the formation of vigilante groups and their activities, and official participation or collusion in vigilante activities. Often, one or more of these levels of involvement can co-exist.

55. Recognition of the various roles that States have played in vigilante killings has important implications for considering States' international legal obligations. States are obliged both to respect and to ensure the right to life.[77] This means that they are required to refrain from violating the right to life and also that they must adopt the necessary legislative, judicial, administrative, educative and other measures to guarantee that the right to life is respected within their territory or areas under their control.[78] In other words, just as States are prohibited from using otherwise private actors to carry out vigilante killings, they are required to protect people from violent vigilantism carried out by privately formed groups.

56. With respect to the relationship between vigilantism and the obligation to respect the right to life, some types or cases of vigilante killings appear to have such a level of State involvement on the facts that the killings could reasonably be judged as attributable to the State. The conduct of private individuals is attributable to a State where, for example, those actors are acting on the instructions of, or under the direction or control of, the State.[79] Whether any particular vigilante killing is attributable to the State needs to be determined on a case-by-case basis. An example that would likely satisfy the attribution test would be where State officials fund the formation of a vigilante group and instructs it to kill certain named individuals or to patrol a certain area and kill suspected criminals. Where attribution exists on the facts, the State is internationally responsible for the killing itself. The provision of compensation or rewards for such killings would likely satisfy the criteria for attribution.

57. Outside of such cases of direct liability, the State can also be internationally responsible for failing to meet its due diligence obligations to ensure that rights are

[76] State involvement in vigilantism is not a new development. See e.g. Burrows, note 9 above, pp. 20-21 (describing senior official involvement in or support for vigilantism in the nineteenth century United States context).

[77] International Covenant on Civil and Political Rights, articles 2 and 6.1.

[78] Human Rights Committee, General Comment No. 31, "Nature of the legal obligation on States parties to the Covenant", 2004 (CCPR/C/21/Rev.1/Add.13); Commission on Human Rights resolution 2004/37, paras. 6-7.

[79] See the International Law Commission's articles on responsibility of States for internationally wrongful acts (2001), art. 8 (and commentary set out therein); see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports, 1986, paras. 109-115; compare *Prosecutor* v. *Duško Tadić*, International Tribunal for the Former Yugoslavia, Case IT-94-1-A, ILM, vol. 38 (1999), No. 6, November 1999, para. 117.

respected.[80] The State's obligations to protect victims from vigilante violence and to investigate and prosecute perpetrators are especially relevant. All too often, the actions of officials encourage or permit vigilante killings in such a way that they entail a failure to meet the State's due diligence obligations. A State's obligation to "ensure" the right to life is not breached simply because a vigilante kills a suspected criminal. Generally, isolated killings of individuals will constitute a crime in violation of the State's domestic laws, but not give rise to any international governmental responsibility. However, a State will violate its obligation to "ensure" the right to life when it fails to take appropriate measures to prevent, punish, investigate or redress the harm caused by vigilantes.[81] The police, for example, fail in their duty to prevent when they refuse to respond to calls of ongoing mob justice, or to take victims for medical treatment.[82] States also fail in their obligations when they permit the perpetrators of vigilante killings to escape prosecution, as so often happens.[83] Where vigilante killings are known to be a significant phenomenon, the State should take specific and focused action to investigate and stop them. The State may need to create a specialized law enforcement task force to dismantle vigilante groups and arrest and prosecute perpetrators,[84] or investigations by a State's national human rights institution may be appropriate (as is currently occurring in the Philippines). The international community can usefully assist States in such efforts through the provision of technical advice and resources.

3. The victims and perpetrators of vigilante killings

58. The survey indicates that the most common victims of vigilante violence are suspected criminals, generally young males and especially those suspected of having committed theft. Country-specific studies confirm the latter group as the primary victims: studies in Brazil show that the "majority of lynch victims were poor people accused of thievery",[85] research in Guatemala found that 55 per cent of victims were suspected thieves,[86] analysis from Ghana found that most victims were young males accused of theft[87] and a study from Tanzania found that 95 per cent of victims were suspected robbers.[88]

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[80] E/CN.4/2005/7, para. 73; *Velasquez Rodriguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser.L/V./III/19, doc. 13 (1988), 28 ILM (1989) 291.

[81] Human Rights Committee, General Comment No. 31, "Nature of the legal obligation on States parties to the Covenant", 2004 (CCPR/C/21/Rev.1/Add.13); Commission on Human Rights, Resolution 2004/37, para. 9.

[82] Examples of such police failure are discussed in: Amanda Dissel and Kindiza Ngubeni, *A Lonely Way to Die: An Examination of Deaths in Police Custody*, July 1999, Center for the Study of Violence and Reconciliation; David Bruce and Joe Komane, "Taxis, cops, and vigilantes: police attitudes towards street justice", *Crime and Conflict*, No. 17, Spring 1999, p. 39.

[83] For example, in one study of 82 cases, "Police inquests had not closed even one case": Maria-Victoria Benevides and Rosa-Maria Fischer Ferreira, "Popular responses and urban violence: lynching in Brazil", in Huggins (ed.), note 10 above, p. 38.

[84] See for example Makubetse Sekhonyane and Antoinette Louw, *Violent Justice: Vigilantism and the State's Response*, Monograph 72 (March 2002), chap. 3 (noting that the targeted prosecution of Mapogo members in South Africa had "decreased the group's activities").

[85] Benevides and Ferreira, note 83 above, p. 37.

[86] A/HRC/11/2/Add.7, para. 14.

[87] Adinkrah, note 49 above, pp. 413-427.

[88] Ng'walali and Kitinya, note 66 above, p. 36.

59. Other frequent targets of vigilante violence are suspected murderers, perpetrators of assault, gang or cartel members and suspected or convicted sex offenders, including rapists and child sex offenders. Suspected "witches", a victim group upon which the Special Rapporteur reported in his latest report to the Human Rights Council, are also commonly targeted in mob attacks.[89] Likewise, so-called "street children" have often been killed by vigilantes wanting to "cleanse" society of undesirables. Victims are also often those who are considered to have violated an individual's or group's moral or religious codes, such as abortion doctors, sex workers or those judged inappropriately dressed.

60. It should also be emphasized, however, that there are inevitably important instances in which the wrong individuals are identified, or persons are deliberately accused of crimes of which they are not guilty in order to punish them for some other reason, or to eliminate an enemy or rival.

61. The perpetrators of vigilante killings can vary widely from one context to another. In some cases, the perpetrators are unknown to each other: a suspected thief will be identified in the street, calls will be made to catch him and passers-by will join in chasing, beating and killing the suspect.[90] In others, a group of perpetrators who know each other (often neighbours, or residents of a small community) will join together to hunt down a suspect. Both types of killings are often referred to as "mob justice" and are frequently carried out in public. They tend to be committed in a particularly gruesome manner, with the victim often being severely beaten before death, murdered in a slow and painful fashion (e.g., dismembered or burned to death) and the corpse is often further disfigured after death.

62. More formal and less spontaneously formed groups of vigilantes are also found throughout the world. The Davao City Death Squad in the Philippines is well known, as are the Bakassi Boys in Nigeria, and groups like People Against Gangsterism and Drugs (PAGAD) or Mapogo a Mathamaga in South Africa. These groups are distinguishable from criminal gangs or terrorists only by their professed motives. Some take payments from community members to "patrol" for criminals, or to find and kill named suspected criminals. Some have formal codes of conduct and membership fees. They afford their victims varying degrees of "due process", with some groups carrying out their own "investigations" and mini-"trials" of suspects.

63. Perpetrators can also include individuals who hire or request others to carry out vigilante killings on their behalf (e.g., *justiceiros* in Brazil).

64. Knowledge of the predominant identities of victims and perpetrators in a particular country or area should guide the response of States and the international community to the killings. Very differently tailored responses will be necessary to combat mob killings of "witches" than would be necessary to stop formally organized group murders of named criminals. The importance of careful research-based responses to vigilante killings, and the response implications in various circumstances, are addressed in section 5 below.

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[89] A/HRC/11/2, paras. 43-59.

[90] Benevides and Ferreira, note 83 above, pp. 39-40, refer to such killings as "anonymous lynch action", in comparison to "communal lynchings".

4. Human rights and security implications

65. Those who argue in favour of vigilante killings stress, as the rationale for their actions, the injustice suffered by the victim or victims of crime and insecurity. Vigilantes are right in arguing that victims of crime deserve justice and that perpetrators of crime should be held to account. Moreover, States have the clear obligation to promote security for their residents. To this end, criminals should be investigated, prosecuted and punished.

66. It is a basic tenet of human rights law, however, that suspected criminals should not be sentenced and punished until they have been through a trial respecting fair trial guarantees, and the punishment of death should be reserved strictly for only the "most serious crimes" (intentional murder).[91] However nobly stated the aims of any vigilante killing may be, by their very nature, they are murders and grave violations of the right to life and of the right to be fairly tried by a court of law. Victims are simply summarily executed, often in a particularly brutal manner, thus introducing an element of torture or cruel, inhuman and degrading treatment. Sometimes, there will be a pretence of a "trial", but generally the person is presumed guilty, found, detained and killed by the same individual or group that acts as victim, police, prosecutor, judge, jury and executioner. This presents a great risk that innocent people will be killed. The punishment is also generally entirely disproportionate to the crime allegedly committed. Very often, individuals are murdered for minor offences, especially petty theft, and for imputed beliefs, practices or identities which are not and should not be criminal offences at all (such as witchcraft). In one study of 82 lynching incidents in Brazil between 1979 and 1982, many killings were in response to thefts of items of low value, including "a cheap radio or a small amount of food".[92]

67. Less obviously, vigilante killings can also violate the rights of the victims of the crimes that the vigilante killing purports to address. Victims of crime have a right to a remedy, including a judicial remedy.[93] The murder of a suspect denies the possibility of a trial and of the victim being heard, and seeking and arriving at the truth. Further, the arbitrary killing of a suspected but never convicted wrong-doer may lead to the actual criminal escaping investigation and prosecution.

68. While vigilantes often profess to be acting to uphold community security, their actions are counter-productive. Not only do vigilante killings violate individual rights, but they are inimical to security for the citizenry as a whole, even in the short-term. In bypassing the police and the criminal justice system, they further erode respect for the rule of law and undermine efforts to develop responsible policing and effective justice systems. Some vigilantism not only bypasses the police, but also actively targets them. Assaults on police officers who intervene to stop vigilante killings, or at police stations where suspects are held, are not uncommon. In many cases, the initial "justice" violence of vigilante groups metamorphoses into regular thuggery and organized criminal violence. The South

[91] International Covenant on Civil and Political Rights, art. 6.2; A/HRC/4/20/Add.2, para. 28.

[92] Benevides and Ferreira, note 83 above, p. 37.

[93] Universal Declaration on Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2.3 (a); African Charter on Human and Peoples' Rights, art. 7; American Convention on Human Rights, art. 25; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex).

African vigilante group PAGAD, for example, started as a group targeting suspected drug dealers, but quickly became increasingly militant and attacked and bombed the police themselves.[94] The initially contained and targeted violence of such groups has the clear potential to spiral out of control, as occurred with the Bakassi Boys in Nigeria. Where vigilante killings in one city or town of a country continue unchecked, they can stand as an example for others and readily spread to other cities. Vigilante killings can also result in increased violence through revenge attacks and the formation of counter-groups (for example, in Nepal and Kenya). Given their often public nature, vigilante killings can further increase the fear and insecurity felt by citizens who are forced to watch a fellow citizen murdered on the street and who are then unable to speak out for fear of retribution.[95]

5. Context and motives for vigilante killings and the need for context-specific in-depth research

69. The most commonly stated or theorized reasons — whether presented in news reports, academic writing, human rights reporting or by the perpetrators themselves — for the occurrence of vigilante killings are actual or perceived high crime rates and general insecurity, ineffective policing, widespread corruption and a lack of faith that the criminal justice system will in fact provide justice because it is too slow, too lenient, too corrupt, too expensive or too inaccessible. In some countries, the breakdown of traditional justice (due, for example, to protracted armed conflict) has also been an important factor in the growth of alternative methods of "justice". Times of transition, especially from military or authoritarian governments to democracy, or from armed conflict to peace, can often be accompanied by vigilantism.[96]

70. As the survey suggests, in many countries, these general factors are likely to be important or essential factors in, as well as predictors of, vigilante killings. However, efforts to reduce vigilante killings must involve more than general calls for improved police and court systems. It is vital, in seeking to understand and reduce this violence, that careful and detailed context-specific analysis is undertaken and that such work guides reform efforts. This is all too infrequently the case.

71. A report on lynchings by the United Nations Verification Mission in Guatemala (MINUGUA) provides a notable exception.[97] As the Special Representative discussed in his report on his 2005 fact-finding mission to Guatemala, the MINUGUA report found that lynchings were predominantly due to the "incomplete transition from the period of armed confrontation", in which the counter-insurgency movement had disrupted indigenous justice systems. When the war formally ended, the criminal justice system was not sufficiently developed and this left a "power vacuum".[98] The detailed analysis of causes positioned MINUGUA to be able to propose context-specific reforms targeted at reducing vigilante killings, which included developing indigenous justice and adapting criminal justice to rural

[94] See Minnaar, note 42 above, pp. 124-128.

[95] See, for example, ibid., p. 120.

[96] As, for example, in Nigeria. See Innocent Chukwuma, "Responding to vigilantism", in *Human Rights Dialogue* Series 2, No. 8, Fall 2002: "Public security and human rights".

[97] MINUGUA, "Los Linchamientos: un flagelo que persiste", July 2002.

[98] A/HRC/4/20/Add.2, para. 29.

communities' needs.[99] The tailored nature of the recommendations, based upon serious and thorough analysis of the context for the killings, provides an important example of the first step that should be taken by those seeking to address vigilantism: reforms should be built upon context-specific analysis.

72. Similarly, academic analysis of the determinants of support for vigilante killings in Ghana provided important insights for developing reform measures in that country. Tankebe's in-depth study found that "public support for vigilante self-help was fundamentally linked to people's judgments about the trustworthiness of the police; people who perceived that the police were not trustworthy were more likely to support vigilantism".[100] Perceptions about how well the police leadership was addressing corruption in the force was also a factor.[101] Importantly, Tankebe also found that "contrary to many current understandings of vigilantism, neither experience of police corruption nor perceptions of police (in)effectiveness were significant predictors of support for vigilantism".[102] His study also found that those with higher levels of education were less likely to support vigilantism and that, although much vigilantism was carried out by younger people, support was strongest amongst older people.[103] These findings provide important information to assist with the design and targeting of education programmes directed at reducing vigilantism. For instance, not only do they suggest that likely perpetrator groups should be included in education efforts, but they also support the inclusion of other demographic groups who might otherwise not be the subject of focus (such as older people, revealed by the study to be those supporting the perpetrators). Crucially, the study also indicates that, in reducing support for vigilantism, particular attention should be paid to measures taken to increase public confidence in the police and positive attitudes towards the police, rather than indicators of police effectiveness alone.

73. Research undertaken in South Africa by Sekhonyane and Louw has also stressed the importance of looking beyond justice system effectiveness, to include public perceptions of effectiveness in the context of vigilantism.[104] The authors argued that the public was provided with insufficient information about the criminal justice process, especially the purpose, function and effect of bail for suspects, and that that was a notable factor in support for vigilantism.[105] Such a conclusion suggests that, in addressing vigilante killings as part of law and order reform, emphasis should be placed on ensuring that there is appropriate communication to the public about the workings and outcomes of the criminal justice system. In practice then, while educational measures to reduce vigilante killings are important, those measures which would simply convey the unlawful nature of vigilante killings will likely be ineffective; education should include a focus on criminal justice and be tailored to address the concerns of specific communities.

74. The complex underlying causes and motives of vigilante killings indicate that there is no "quick fix". They will generally need to be addressed within the wider

[99] Ibid., para. 30.

[100] Justice Tankebe, "Self-help, policing, and procedural justice: Ghanaian vigilantism and the rule of law", *Law & Society Review* vol. 43, No. 2, 2009, 245, pp. 259-260.

[101] Ibid., p. 258.

[102] Ibid., p. 260.

[103] Ibid., pp. 257, 261-262.

[104] Sekhonyane and Louw, note 84 above, chap. 4.

[105] Ibid.

context of policing and criminal justice reform. But the examples cited above also indicate that vigilante killings need not be treated as so complex that their reduction is conceived to be only a hoped for by-product of substantial law and order reform. With context-specific research into the identities of victims and perpetrators, the types and locations of vigilantism, the relationship between vigilantism and the State, and the reasons for vigilante killings, States can formulate and undertake concrete measures to reduce killings.

6. Community policing, neighbourhood watch groups and vigilante killings

75. Community policing initiatives are important and can play a much-needed role in filling gaps in law enforcement by the police. The underlying motives for vigilantism may be usefully channelled into lawful community policing or watch activities. Research from South Africa has suggested that, where appropriately designed, community policing programmes can help reduce vigilantism.[106]

76. However, where the State promotes community self-policing groups or neighbourhood watch groups, it must take careful steps to ensure that such groups operate within the bounds of the law and that they do not turn into criminal organizations carrying out unlawful killings in the name of "justice". It may, for example, be necessary for such groups to be locally registered and monitored.[107] Community group members will need to be educated about the relevant laws, and instructed on what actions they are permitted and not permitted to take, so that their self-policing stays within lawful bounds. There should also be a clear system of liaison between such groups and the police, so that the efforts are complementary.

E. Conclusions and recommendations

77. Vigilante killings are a significant phenomenon in many countries around the world, but they receive far too little attention from a human rights perspective.

78. States should make comprehensive efforts to ensure that they are not supporting or encouraging vigilante killings in any way, either directly or indirectly.

79. Where the relevant senior officials do not publicly denounce any instances of vigilante killings, there is a reasonable presumption that they have failed to take the measures required of them under international human rights law.

80. Where vigilante killings persist over a considerable period of time, and the relevant police or municipal authorities have failed to take measures to reduce or eliminate them, national Governments should introduce a system of penalties designed to ensure that the appropriate measures are taken.

81. To reduce vigilante killings, the prompt investigation, prosecution and punishment of perpetrators are crucial.

82. As part of broader law and order reforms designed to reduce crime and promote accountability, Governments and international donors should directly address the problems of vigilantism within the relevant communities.

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[106] Ibid.

[107] E/CN.4/2006/53/Add.4, para. 107.

83. In countries with significant numbers of vigilante killings, Governments should undertake or fund systematic studies of the phenomenon, with a view to obtaining detailed information on how and where they occur, who commits them and in what circumstances, who the victims are, the involvement of police and other officials in the killings, and the motivations and causes of the killings. Given the extent to which vigilantism undermines other efforts, international development organizations should be prepared to fund such studies, as well as follow-up activities, where appropriate.